CRIMINAL REVISION.

Before Mr. Justice Heaton and Mr. Justice Shah.

1919.
April 7.

EMPEROR *v.* MURARJI RAGHUNATH GUJRATI.*

Indian Penal Code (Act XLV of 1860), section 415—Cheating—Deceit—Shopkeeper receiving currency notes in exchange for goods sold—Retention by shopkeeper of small amount from change on ground that notes were not worth face value—Plea of guilty.

The accused who had sold goods worth Rs. 2-13-0 to a customer, received from him two currency notes, one of Rs. 2-8-0 and the other of Re. 1; but tendered as change only 0-9-3 saying that the notes were not worth their face-value, and that Re. 0-1-9 were charged on that account. The accused pleaded guilty and was convicted of the offence of cheating. On application to the High Court,

Held, (1) that whether on the admitted facts the accused ought to be held to have committed the offence of cheating was a question of law, as to which the plea of the accused was immaterial;

(2) that he had not committed the offence of cheating, for there was no deceit at all, since the customer was not induced to hand over the notes by any representation on the part of the shop-keeper that he would get change calculated on the face-value of the notes, but handed them to the accused in the ordinary course of the sale and purchase transaction.

THIS was an application in revision against conviction and sentence passed by G. B. Naralikar, First Class Magistrate, Jalgaon city.

The accused, who owned a grain shop, sold 6 seers of jowari to the complainant for Rs. 2-13-0, and was paid two currency notes, one of Rs. 2-8-0 and the other of Re. 1. Instead of giving 11 annas as change as he ought to have done the accused gave only 0-9-3, saying that the value of the notes was less by 0-1-9.

On these facts, the accused was convicted of the offence of cheating and sentenced to pay a fine of Rs. 25.

* Criminal Application for Revision No. 28 of 1919.

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The accused applied to the High Court under its criminal revisional jurisdiction.

P. B. Shingne, for the accused.

S. S. Patkar, Government Pleader, for the Crown.

HEATON, J. :—This is a case which is both interesting and important. A customer purchased from a shop-keeper goods the price of which was Rs. 2-13-0 and he tendered in payment two currency notes, one of Rs. 2-8-0 the other of Re. 1. The shop-keeper accepted the notes and the change which apparently he ought to have given was annas 11, but he tendered as change only 9 annas and 3 pies, saying that the notes were not worth their face value and that 1 anna and 9 pies was charged by the shop-keeper on that account. At least that is what in substance happened, though of course we cannot be sure from the evidence, what were the exact words used. What happened exactly next we do not know from the evidence. But we know either that the customer complained to a police officer or that the police officer saw what had happened and intervened, for the two notes paid to the shop-keeper were attached, a Panchnama was made and the shop-keeper was sent before a Magistrate who, after taking evidence, framed a charge of cheating. The accused pleaded guilty to the charge. He was convicted and sentenced to pay a fine of Rs. 25 and he has applied to this Court in revision.

First I will deal with the plea of guilty. I feel perfectly certain in my own mind that the accused never intended by his plea of guilty to admit more than that the facts alleged against him were true. Whether on those facts he ought to be held to have committed the offence of cheating is really a question of law, as to which the plea of the accused must be considered immaterial. Magistrates sometimes make msitakes of

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this kind. They think that because an accused person admits the facts, therefore he admits that he has committed the offence with which he is charged. This is one of those cases in which the admission of the facts does not amount to an admission of the offence. Therefore I shall proceed to deal with the case as if there were no plea of guilty.

For cheating there must be deceit. In this case obviously there was no deceit at all in the earlier part of the transaction. There was a sale of goods after the usual inquiry as to price and there was a tender of the price by the purchaser. So far then there was clearly no deceit. But it is said that the shop-keeper deceived when he stated that the notes were not worth their face-value. Whether he said this before or after he had taken the notes into his hands does not appear. But in substance it is to my mind perfectly clear that there was no deceit at all. The customer was not induced to hand over the notes by any representation on the part of the shop-keeper that he would get change calculated on the face-value of the notes. He handed the notes to the shop-keeper in the ordinary course of the sale and purchase transaction and what really happened was that a dispute then arose as to the correct amount of change due to the customer. He claimed 11 annas calculated on the face-value of the notes. The shop-keeper said he would give only 9 annas and 3 pies, because the notes were not worth their face-value. It is, as I judge it, simply a case of a dispute between the shop-keeper and the customer, and in no way whatever a case of deceit, and certainly not a case of cheating. That is the only matter that we have to consider. The case may illustrate the fact that there are economic and financial difficulties about these notes. With that we have nothing to do. We have merely to decide whether the present applicant is guilty of the offence of cheating,

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and in my opinion it is not a matter even of the slightest doubt—I hold that it is perfectly clear—that he never committed the offence of cheating in this matter at all.

I think our order should be that the conviction is set aside and that the fine, if paid, should be refunded.

SHAH, J. :—I entirely agree.

Order set aside.

R. R.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Macleod.

1918.

September 3.

SHIRINBAI (DEFENDANT-APPELLANT) *v.* RATANBAI AND OTHERS (PLAINTIFFS AND RESPONDENTS).*

Will, construction of—"Malek Mukhtyar" for life—Existence indicated in will of special oral directions—Terms of the trust not ascertained or ascertainable—Power executed in professed compliance with authority given—Parol evidence admissible to prove the trust so as to prevent a fraud—Onus of proof—Undistributed share of the property of an intestate—Indian Limitation Act (IX of 1908), Article 123.

A Parsee testator by his will made his wife "Malek Mukhtyar" as to all his property during her life, just as the testator was the owner, free from question by any of his other heirs, representatives, relatives and kinsmen with directions that she should protect the children, as he had protected them, according to their means, declaring that if any of his children should not act according to her orders, then during her life-time the child should not have any claim to any of the testator's property. Clause 7 of the will provided that "agreeably to what was written above, the wife was, during her life-time, to carry on 'Vahivat' (management) in respect of every kind of property and make expenses on auspicious and inauspicious occasions, as the testator had been doing." The clause further provided : "and in her life-time, keeping God and Meher Davar (the Dispenser of Justice) before her mind, my wife shall duly as I have directed her orally and according to the times (i.e., as

* O. C. J. Suit No. 703 of 1916 ; Appeal No. 49 of 1917.